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criticized on the ground that quasi-contract lies where there has been a benefit to the defendant and a loss to the plaintiff,²⁴ and has not been universally followed.²⁵

THE NATURE OF A STOCKHOLDER'S INTEREST IN THE REAL ESTATE OF THE CORPORATION.—Section 2 of the California Alien Land Law of 1920 prohibits citizens of Japan from acquiring or possessing any interest in agricultural land. The penalty for violation of this Statute is that such an interest shall escheat to the state. The plaintiff, a Japanese citizen, acquired 28 shares of the capital stock of a corporation which owned a large tract of California land devoted to agricultural purposes. In an action in equity to restrain the Attorney General of California from confiscating the plaintiff's holdings, the question considered was whether the ownership of this stock was such an interest in real property as to bring the plaintiff within the prohibitory provisions of the Act. The court answered the question in the affirmative and refused to grant the injunction. *Frick v. Webb* (D. C. N. D. Cal. S. D. 1922) 281 Fed. 407.

No attempt is made by the court to support its holding either by reason or authority. And it would seem that in the light of established legal principles such an attempt would be futile. Shares of stock are not real property.¹ They are in the "nature of contract rights or choses in action" with many of the attributes of personal property.² Title to the corporate property is in the corporation;³ so also is the right to control and manage it.⁴ A member or stockholder is in no sense a tenant in common or a co-owner.⁵ He can acquire corporate property only through a corporate act,⁶ and cannot claim it in case of the corporation's insolvency.⁷ Even though he be the sole stockholder he does not own, nor can he sell or dispose of the property of the corporation or bind it by his agreement,⁸ or maintain replevin for its personalty in his own name.⁹ Apart from the stock itself he has no interest in the corporate assets which is capable of assignment.¹⁰ His interest as a stockholder does not pass to the mortgagee under a general mortgage secured by all the corporate property.¹¹ Thus the interest of a stockholder is of a collateral nature and not that of an owner.¹²

The stockholder no doubt has an "interest" in the sense that he is "interested" in the property of the corporation. Thus he can prevent waste or abuse of it, require its protection by those in control,¹³ and insure it.¹⁴ Such interests

²⁴ See Keener, *Quasi Contracts* (1893) .165; Woodward, *Quasi Contracts* (1913) § 275.

²⁵ *McSorley v. Faulkner*, *supra*, footnote 23.

¹ *Bligh v. Brent* (1837) 2 Y. & C. Ex. 268.

² See *Bellows Falls Power Co. v. Commonwealth* (1915) 222 Mass. 51, 57, 109 N. E. 891.

³ See *United States Trust Co. v. Heye* (1918) 224 N. Y. 242, 253, 120 N. E. 645.

⁴ *Sellers v. Greer* (1898) 172 Ill. 549, 50 N. E. 246.

⁵ See *Humphreys v. McKissock* (1891) 140 U. S. 304, 312, 11 Sup. Ct. 779; *Rothchild v. Memphis & C. R. R.* (C. C. A. 1902) 113 Fed. 476, 479.

⁶ See *United States Radiator Corp. v. State of New York* (1913) 208 N. Y. 144, 152, 101 N. E. 783.

⁷ *Sanborn-Cutting Co. v. Paine* (C. C. A. 1917) 244 Fed. 672; *Boynton v. Roe* (1897) 114 Mich. 401, 72 N. W. 257.

⁸ See *Watson v. Bonfils* (C. C. A. 1902) 116 Fed. 157, 167.

⁹ *Button v. Hoffman* (1884) 61 Wis. 20, 20 N. W. 667.

¹⁰ *Cotten v. Tyson* (1913) 121 Md. 597, 89 Atl. 113; *contra*, *Fetzer v. South Side Lumber Co. of Chicago* (C. C. A. 1913) 202 Fed. 878.

¹¹ *Humphreys v. McKissock*, *supra*, footnote 5.

¹² See *City of Utica v. Churchill et al.* (1865) 33 N. Y. 161, 238.

¹³ *Duquesne Co. v. Glaser* (1909) 46 Colo. 186, 103 Pac. 299.

¹⁴ *Seaman v. Enterprise Fire & Marine Ins. Co.* (C. C. 1884) 21 Fed. 778.

do not arise out of any right in the sense of ownership, but are based upon the fact that the destruction of the property would prejudice his right to dividends and assets on dissolution.¹⁵ Such attributes fall far short of those which usually flow from true interests. Equity, which always grants specific performance of a contract to deliver interests in real estate, refuses to grant specific performance of a contract to deliver stock merely because the corporate property consists of realty.¹⁶ The test of specific performance would seem to be of great significance in determining whether or not such stock is an interest in real estate.

Closely analogous cases offer no support for the holding in the instant case. Under a statute forbidding foreign corporations to acquire real estate either directly, or in the corporate name, or through any trustee or other device, it was held that the ownership by a foreign corporation of all the stock in a domestic corporation which owned such land was not prohibited.¹⁷ Where a British statute forbade the registration of foreign owned ships, a British corporation composed partly of foreigners was permitted to register.¹⁸ A restrictive covenant in a deed to the effect that title to the land was never to vest in a person or persons of African descent was not violated by a subsequent conveyance of the land to a corporation composed entirely of such persons.¹⁹ A partnership transferring its real estate to a corporation made up entirely of the partnership members no longer has title to the real estate.²⁰ Provisions in a policy of insurance that the insurers must be sole owners constitute a complete defense to actions by all the stockholders of a corporation on a policy issued to them, as owners, upon the property of the corporation.²¹ Similarly, the attaching of a materialman's lien upon property of the defendant corporation was disallowed as to work done for another corporation which held the property under a lease, despite the fact that all of the stock of the former was owned by the latter.²² And in a case where the facts were strikingly similar to those of the instant case, a law prohibiting aliens from owning mining land was held not to have been violated by an alien owning fifty-five per cent of the stock of a domestic corporation which owned such land.²³

Besides having no basis in precedent the instant holding seems to be unsound in principle. It is certain that the conception of a distinct corporate existence apart from those who make up the corporation excludes any possibility of a legal interest in the stockholder. It would seem also that there is no equitable interest in the property. While some authorities appear to be to the contrary,²⁴ the better view supports this contention.²⁵ The stockholder is not directly concerned in the tangible assets of the corporation. Where A has a contract right that B shall convey to him a certain parcel of land, it is easy to find something in the nature of an interest in that land—he has a right to get

¹⁵ *Riggs v. C. M. Ins. Co.* (1890) 125 N. Y. 7, 25 N. E. 1058.

¹⁶ *Bernier v. Griscom-Spencer Co.* (C. C. 1908) 161 Fed. 438 (*semble*).

¹⁷ *Commonwealth v. New York, etc. R. R.* (1888) 132 Pa. St. 591, 19 Atl. 291.

¹⁸ *Regina v. Arnaud* (1846) Q. B. Rep. 9 A. & E. (N. s.) 806.

¹⁹ *Peoples' Pleasure P. Co. v. Rohleder* (1909) 109 Va. 439, 61 S. E. 794.

²⁰ *John Foster & Sons v. Commissioners of Inland Revenue* [1894] 1 Q. B. 516.

²¹ *Syndicate Ins. Co. v. Bohn* (C. C. A. 1894) 65 Fed. 165.

²² *Consolidated Lumber Co. v. Ocean S. Co.* (1914) 142 Ga. 186, 82 S. E. 532.

²³ *Princeton Mining Co. v. First Nat. Bk.* (1888) 7 Mont. 530, 19 Pac. 210.

²⁴ *Lynch v. Turrish* (C. C. A. 1916) 236 Fed. 653; see *Hocking Valley Ry. v. Toledo Terminal R. Co.* (1918) 99 Ohio St. 35, 44, 122 N. E. 35.

²⁵ See *People v. Dennett* (1916) 276 Ill. 43, 46, 114 N. E. 493; *Pascual v. Del Saz Orozco* (1911) 19 Philippine 82, 86; *Red Bud Realty Co. v. South* (1910) 96 Ark. 281, 291, 131 S. W. 340.

the land itself, with all the right, title, and interest both legal and equitable vested in him. But the owner of stock has only a right to his proportionate share in the profits of the corporation and the assets on dissolution. He never has the right to have the land or any portion of it turned over to him while the corporation functions.

The same result could have been reached in the instant case without violating any principle of law or equity. While there are instances where the courts, and especially the courts of equity,²⁶ have disregarded the covering of the corporate entity in search of the real party at interest,²⁷ still there are few cases where justice could not have been done by adhering to established legal principles.²⁸ This tendency to disregard so sound a legal conception often works injustice.²⁹ Nothing is more firmly established than the proposition that a person cannot use the corporate form to escape existing liabilities,³⁰ or work a fraud,³¹ or to violate a statute.³² But corporations cannot make use of individuals any more than one individual can make use of another to evade the provisions of a statute.³³ If, in the instant case, the plaintiff is deliberately concealing his nationality behind the corporate form, he is making use of a device which has never been countenanced, and to prevent which it is entirely unnecessary to treat his stock holdings as an interest in land. The same result could also have been reached by an even simpler process. Section 3³⁴ of the Statute in question specifically forbids an alien to acquire or possess stock in a corporation which owns agricultural land. No reason suggests itself for the disregard of this section.

The instant case is but another example of the anxiety of the courts in modern times to deal with the corporate entity theory as a fiction to be disregarded at will. So long as the legislature permits incorporation and gives to this artificial being of its creation distinct rights and liabilities, there seems to be no more of a fiction involved than in the case of any other right created by legislative action. When corporations are used by individuals to defeat justice the guilty parties can be just as readily reached as though a natural person had been used for the same end. To say that the corporate entity exists for certain purposes and not for others can lead only to confusion and uncertainty.

²⁶ See *In re McCarthy Portable Elevator Co.* (D. C. 1912) 196 Fed. 247, 251, *aff'd* (C. C. A. 1913) 201 Fed. 923.

²⁷ *Joseph R. Foard Co. v. State of Maryland* (C. C. A. 1914) 219 Fed. 827.

²⁸ See Canfield, *The Scope and Limits of the Corporate Entity Theory* (1917) 17 COLUMBIA LAW REV. 128.

²⁹ See *In re Rieger, Kapner & Altmark* (D. C. 1907) 157 Fed. 609, where the court preferred one set of innocent creditors to another.

³⁰ *York Mfg. Co. v. Brewster* (C. C. A. 1909) 174 Fed. 566.

³¹ *McCaskill Co. v. United States* (1910) 216 U. S. 504, 30 Sup. Ct. 386.

³² *Ford v. Chicago Milk Shippers' Ass'n* (1895) 155 Ill. 166, 39 N. E. 651; *United States v. Milwaukee Refrigerator Transit Co.* (D. C. 1905) 142 Fed. 247.

³³ *United States v. Munday* (1911) 222 U. S. 175, 32 Sup. Ct. 53.

³⁴ Cal. Codes & Gen. Laws (Cons. Supp. 1921) p. 923.